

SOUTHERN UTAH WILDERNESS ALLIANCE ET AL.

IBLA 97-43, etc. 1/

Decided August 30, 1999

Consolidated appeals from the October 9, 1996, decision of the San Juan (Utah) Resource Area Office, Bureau of Land Management, approving the construction of the Cedar Mesa/Grand Gulch Visitor Contact Station. UT-069-95-051.

Set aside and remanded.

1. Environmental Policy Act--Environmental Quality:
Generally--Environmental Quality: Environmental
Statements--Public Lands: Generally

A finding of no significant environmental impact and record of decision with respect to a proposed action based on an environmental assessment will be set aside and the matter remanded where the record establishes that BLM failed to take a "hard look" at the environmental impacts of the activity or consider reasonable alternatives, in that BLM announced in its EA that it was not considering important questions bearing on the environmental consequences of its decision to build a visitor contact center in an environmentally and culturally sensitive area despite having identified those questions as relevant in earlier environmental review.

APPEARANCES: David J. Pacheco, for Southern Utah Wilderness Alliance; Ken Sleight, pro se; Victor Joe, Jr., for the Navajo Utah Commission; Owen Severance, pro se; Julia M. Johnson, Director, Wetherill-Grand Gulch Research Project; Leonard Lee, President, Aneth Chapter, Navajo Nation; Neal Crank, President, Oljato Chapter, Navaho Nation; Ann G. Hayes, pro se; Ann E. Phillips, pro se; G. Kevin Jones, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

1/ The following appeals are considered herein: Southern Utah Wilderness (IBLA 97-43), Pack Creek Ranch (IBLA 97-44), Navajo Utah Commission (IBLA 97-45), Owen Severance (IBLA 97-46), Grand Gulch Research Project and Julia M. Johnson (IBLA 97-56), the Aneth Chapter, Navajo Nation (IBLA 97-57), the Oljato Chapter, Navajo Nation (IBLA 97-58), Ann G. Hayes (IBLA 97-59), and Ann E. Phillips (IBLA 97-60).

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Southern Utah Wilderness, *et al.*, 2/ have separately appealed from the October 9, 1996, decision of the San Juan (Utah) Resource Area Office, Bureau of Land Management (BLM), approving the construction of the Cedar Mesa/Grand Gulch Visitor Contact Station, as described in Environmental Assessment UT-069-95-051. 3/

Several of the appellants petitioned the Board to stay the effectiveness of BLM's approval decision. By order dated December 26, 1996, we granted those petitions, noting that the likelihood of irreparable harm amply justified that action. 4/

On October 9, 1996, BLM issued its Environmental Assessment/Decision Record (EA/DR) for a BLM visitor contact station facility at Kane Gulch on the Grand Gulch Plateau. BLM decided to build the visitor contact station on the site of the existing BLM Kane Gulch Ranger Station, on the east side of State Route 261. 5/ It was designed to replace that facility, which is described in the EA as "unsafe and unhealthy," as well as being infested with deer mice and lacking adequate wiring or a potable water system. (EA at 1.) The proposed visitor contact station was also designed to introduce to the public the Grand Gulch Plateau, a large area covering over 385,000 acres in Southeastern Utah, encompassing Cedar Mesa and Grand Gulch: 6/

The proposed action is the site selection and construction of a new facility for visitor contact and [BLM] field administration at Cedar Mesa in San Juan County, Utah. This action would provide an effective "portal" to the world-class resources of the Cedar Mesa "outdoor museum" to inform (teach) canyon users, impart understanding, and encourage greater public appreciation and care.

2/ See n.1.

3/ This facility is described in the DR as the Cedar Mesa/Grand Gulch Visitor Center Station. We shall refer to it as the "visitor contact station," as BLM did in its EA. (EA at 2.)

4/ BLM filed its answer on Jan. 17, 1997, and, on Feb. 10, 1997, filed a motion to reconsider the stay. By order dated May 22, 1997, we denied that request in part, noting that the likelihood of irreparable harm to appellants persisted, as completion of the facility would effectively block administrative review of BLM's decision. We lifted the stay in part to allow BLM to take further action to protect a water well shaft at the site from collapse.

5/ It is described as consisting of two trailers, a gravel-surfaced parking lot accommodating about 20 passenger vehicles, and a vault toilet. There is apparently also a mobile home that serves as both the ranger residence and the contact station, as well as a camp trailer.

6/ Grand Gulch is a 52-mile-long canyon with numerous side canyons, which contain ancient cliff dwellings and other significant remains of prehistoric cultures.

(EA Checklist at 1.) It is the latter aspect of BLM's decision that is under challenge herein. The DR announced that, "[b]ased on the analysis found in [EA No. 069-95-051] and with consideration of extensive public comment, the decision is to approve the construction of a visitor contact station as described in the Proposed Action" section of the EA. (DR at 1.)

BLM had previously released its EA for public comment on June 21, 1996. It noted that visitor use on Cedar Mesa continues to increase and that it anticipated attempting to manage visitation by limiting entry to the Grand Gulch and Cedar Mesa canyons (possibly by issuing permits) and education of visitors prior to their visits. (EA at 1.) BLM asserted that it had taken several specific management steps toward managing increased use, but noted only its decisions to improve the existing field administration facilities.

BLM alluded in its EA to two larger-scale land use planning decisions predating its decision to construct the visitor contact center: the San Juan Resource Management Plan (RMP), dated March 1991, and the Grand Gulch Plateau Cultural and Recreation Area Management Plan (CRMP), and supporting EA, dated April 14, 1993. The March 1991 RMP listed the Kane Gulch Ranger Station as part of the Grand Gulch Plateau Special Recreation Management Area (SRMA) and specifically indicated that it would be developed. 7/ The April 1993 CRMP covered the Grand Gulch SRMA and cultural resource activities at Cedar Mesa; identified the need for expanded visitor education, interpretation of resources, and public involvement in resource management; and identified the Kane Gulch Resource Area as a top priority for improvements. (EA at 4-5; CRMP at 44-46; Southern Utah Wilderness Alliance, 128 IBLA 382, 385 (1994).) Although the CRMP listed specific concepts for a visitor center, it did not contain site-specific review of the environmental consequences of making such improvements. 8/

7/ BLM decided in the March 1991 RMP to designate Cedar Mesa (among other areas) an Area of Critical Environmental Concern (ACEC) for purposes of natural history/cultural resources management immediately upon approval of the RMP and to prepare management plans for "special designation areas" (RMP DR at 20, 80, 87) and to prepare a CRMP and apply RMP stipulations and special conditions through the National Environmental Policy Act of 1969 (NEPA) documentation. (RMP DR at 21.) BLM also decided to designate the Cedar Mesa an ACEC for purposes of recreation/visual resources management (id.) and to identify a special recreation management area for Grand Gulch. See Southern Utah Wilderness Alliance, 128 IBLA 382, 383 (1994). The RMP DR indicated that BLM would, on an ongoing basis, "[m]odify or construct facilities at developed recreation sites," while incorporating "RMP objectives through NEPA documentation." The Kane Gulch Ranger Station was placed at the top of the priority list for these "recreation sites." (RMP DR at 22.)

8/ By decision dated Mar. 11, 1994, we affirmed a decision of the Acting Area Manager, San Juan (Utah) Resource Area, BLM, implementing the Grand Gulch Plateau CRMP based on environmental assessment (EA) UT-069- 93-01. Southern Utah Wilderness Alliance, 128 IBLA 382 (1994). However, that decision recognized that additional project plans and EA's would be required for site-specific developments and other management actions. Id. at 384, 391.

In its EA, BLM identified administrative issues concerning the new contact station: (1) the concern for health and safety of BLM field rangers and volunteers, (2) the need for permanent and low maintenance facilities for public contact and education regarding visitor use, and (3) site selection to facilitate an effective permitting and fee collection program, on-the-ground monitoring of visitor use and resource conditions, and public emergency communications or assistance services. (EA at 5.) BLM also noted that the following issues had been identified in the Grand Gulch CRMP: (1) the perception that a new contact station would encourage increased use; (2) the concern for protection of archeological resources; and (3) the concern that lands other than those covered by the visitor contact center would be adversely affected, both directly and through secondary impacts. (EA at 5.)

However, despite the identification of these issues in the CRMP, BLM expressly decided in its EA not to address them. It declined to consider the possibility that "[n]ew facilities would increase visitor use," stating, "Visitor use on Cedar Mesa has been and continues to increase due to outside publicity and word-of-mouth," (EA at 5), and finding, without supporting data, that increases in use of the canyons would "most likely be caused by the public's knowledge of the region generated by periodicals and guidebooks." (EA at 6.) BLM also expressly decided not to address either protection of cultural sites, because BLM "has a legal mandate and a general objective to protect cultural resources on public lands throughout the region" that "would not change, regardless of the alternative sites considered"; or Native American concerns, because "[c]onsultation with Native American groups concerning the development of the contact station is ongoing." As to the latter, BLM added that it was indefinitely deferring consideration of these concerns:

Concerns have been expressed, by both the Navajo and the Hopi, about site specific impacts of the station, including increased visitation to the Cedar Mesa area. Both groups are concerned about the potential loss of traditional use areas. Every effort would be made to resolve any issues they may have. When this process is complete, there would be no impacts to Native Americans from the development of the contact station.

(EA at 6.) 9/

9/ BLM also indicated that it was not addressing the following issues: Providing a safe base of operations for visitors, BLM rangers, and volunteers, because it is an important consideration regardless of the site selected; providing permanent low-maintenance facilities to support on-the-ground responsibilities, because "effective management of cultural resources and recreation opportunities at Cedar Mesa is grounded in the need for BLM to encourage proper use practices by people as they visit the public lands" via "contact and education of visitors, both before and as they visit," such that "[i]mprovements in the existing field situation are important if BLM is to provide essential public services and resource protection"; and floodplains, air quality, prime and unique farmlands, wild and scenic rivers, threatened and endangered species, and hazardous wastes, because none of the alternatives would adversely affect air quality or

BLM announced that it had considered, but rejected, "a number of alternative locations" for the visitor contact center. (EA at 8-13.) BLM focused on three alternatives, including a no-action alternative (Alternative C). Under Alternative A, called "Kane Gulch East Side" (which BLM chose as its proposed action) a new visitor contact station would be constructed at the existing site, located on the east side of State Route 261. Under Alternative B, which BLM rejected, a new visitor contact station would be constructed adjacent to the existing site, immediately across to the west side of State Route 261. (EA at 14.) BLM did not consider the possibility of upgrading its administrative facilities without adding a visitor center or other options.

BLM provided the following description of the planned visitor contact center:

The basic design of the contact station structure would be the same at whatever location is selected, although the site plan would differ to fit the terrain and other individual site characteristics. The structure would be of a southwestern architectural style. It would have about 1,700 square feet of interior floor space, with a covered patio of about 2,000 square feet and an uncovered patio area of about 500 square feet. It would have a flat roof with reddish-brown split-faced concrete block walls. The patio would have weatherproof bulletin boards with interpretive and educational displays. The design would feature low maintenance attributes. The facility would meet full accessibility standards.

The facility would blend the concept of the area's rich archeological history with the natural surroundings. It would present the image of a permanent commitment to the national resource values of Cedar Mesa.

Water for the contact station would be provided by a new 1,000 foot test well, successfully drilled in 1995. The well is located approximately 150 feet southwest of the existing contact station trailer. Water from this well could be used at the existing Kane Gulch facilities if the new contact station is not constructed. Determination of the amount of water required was based on visitor use projections over the next 20 years and employee staffing at full levels, which include 2 year-round employees and 6 seasonal employees.

(EA at 14-15 (emphasis supplied).) After addressing alternatives, BLM decided to provide vault toilets for public use. (EA at 11-13.)

fn. 9 (continued)

endangered species, none of the areas involved are prime or unique farmlands or are located in floodplains or near wild and scenic rivers, and no hazardous wastes would be generated. BLM also declined to address environmental justice concerns, stating that a "new visitor contact station would have no adverse impacts to minority or low income populations."

BLM proceeded to analyze the following issues affecting the environment of each site: Visitor services; existing disturbance on site; cultural resources on site; vegetation on site; wildlife on site; scenic attributes; areas of critical environmental concern; water quality and quantity; wetlands and riparian zones; and wilderness. As the appeals challenge BLM's decision to adopt Alternative A (building the visitor contact center at Kane Gulch on the east side of the highway), we shall focus our attention on its findings concerning that alternative.

BLM noted that Kane Gulch east side site met the need for visitor services, that is, an on-site field presence at the primary trailhead, which is the location of the existing ranger station and the customary Cedar Mesa stop for canyon users. It found that there was an existing disturbance on the site, and a review of the potential for cultural resources had been conducted at the east side location. Although a large cultural site had been documented outside of the construction zone, no significant cultural resources are present in the area proposed for the new visitor contact station. No adverse secondary impacts on cultural resources resulting from improving the visitor center were discussed.

BLM found as follows concerning the impacts on visitor services:

It is expected that the new visitor contact station would be constructed within 6 months, thereby impacting one visitor use season. Existing visitor services (including parking, rest rooms, and information facilities) would be temporarily interrupted, and short-term arrangements (such as parking along the employee housing roadway or at the existing parking area in the vicinity of the pond west of State Route 261) may be needed to accommodate public use. During the construction period, the existing contact station would remain in operation as long as safe public access is maintained.

Long-term impacts are expected to include improved visitor services, greater field presence, information, and education. In addition, there would be a permanent and improved base of operations for visitor management, safety, search and rescue, and other services. Both the public and BLM employees or volunteers would have a safer and more maintenance-free facility, enabling more attention to be given to visitor contact and resource management.

(EA at 25.)

BLM reported that there are no sensitive plant species present, and no sensitive (endangered or candidate) wildlife species are found at the site. Further, there are no wetlands or riparian zones at the east side location, and the Kane Gulch east side site is not in a wilderness study area identified by BLM or within the boundary of lands proposed for wilderness designation. BLM concluded:

Construction activities would create new disturbance on less than ½ acre of land east of the highway. This would have

temporary impacts to wildlife species. Since no trees would be removed and bare soil areas would be replanted to native species, no serious long-term impacts are expected for birds and other mobile animals. The presence of the building and the paved patio would result in a slight loss of small terrestrial animals. The permanent building would enable better control of undesired rodents, such as deer mice that may carry the hantavirus.

Effects of construction of the visitor contact center on the area's scenic attributes were considered, as the site is within the Scenic Highway Corridor ACEC, as identified in the San Juan RMP, such that the management goal is to maintain naturally appearing scenic conditions as (Visual Resource Management (VRM)) Class 1. BLM noted that the site could be readily viewed from State Route 261 approaching from the south and that that the highway approach from the north presented only a short sight distance. BLM apparently concluded that construction of the visitor contact center would not spoil the area's scenic attributes:

The topographic variety, rock outcrops, and vegetative array provide for scenic interest. Landscape colors are pale whitish-grey rocks, light green low-growing vegetation, dark green tree foliage, and grey-brown-black tree trunks. The combination of informal shapes and colors present a striking appearance, particularly on the many days with a bright blue sky.

* * * * *

While the contact station would interrupt the natural surroundings for a short distance, this would not be inconsistent with the ACEC designation in the RMP, which provides for such a facility. The architectural style of the contact station is intended to fit into the landscape. The solar panels would be a local visual impact since they must be relatively close to the contact station and open to full sunlight.

(EA at 25.)

As to water issues, BLM set out annual precipitation data for the area and described the soil, watershed, and streams in the area. It concluded the new well should provide an adequate supply of water and cited data developed for the Kane Gulch Test Wells EA (UT-069-94-034), which it incorporated by reference. ^{10/} BLM noted that

[o]ff site impacts resulting from short-term erosion and sedimentation from the site during the construction phase could be mitigated by limiting ground disturbance during the months

^{10/} BLM did not include this EA in its case record.

of high rainfall (mid-July, August, September, and October), incorporating sediment traps into the construction plan, and completing successful contouring and revegetation as soon after construction as possible, [and that l]ong-term erosion and sedimentation impacts could be mitigated by installing adequate drainage and implementing successful contouring and revegetation.

(EA at 26.) It concluded that there would be no adverse impacts to groundwater or downgradient water resources.

In its October 9, 1996, DR, BLM, noting that "[c]onsiderable public comment was reviewed and found to have merit," added some "corrections and management considerations to the EA": 11/

The BLM is pursuing opportunities with local tribes and the National Park Service to increase staffing on the Grand Gulch Plateau. In addition, as a hiking reservation system is implemented for the Plateau, the funds generated will be used to support Plateau staff.

Water will be available for public use at a water fountain and faucet, both will be plumbed to automatically shut off. The fountain and faucet will also be designed with features to discourage excessive water use. Water use will be monitored and adjustments made to that use if the need arises.

Bulletin boards at trail heads will be upgraded. Bulletin boards will not replace the Contact Station, because the station and the bulletin boards serve different functions.

The building and courtyard will be reduced in size by approximately 1,100 square feet.

The parking area has been modified to include pull-through parking for larger vehicles.

The BLM will consult with appropriate Native American groups on all interpretive materials for the Grand Gulch Plateau.

11/ Despite BLM's statement that corrections were made to the EA, we find no corrected EA in the case record forwarded by BLM. BLM has provided two different printings of the document (one in its case file and one as an attachment to its answer), but there are no apparent substantive differences between these documents. Further, although BLM indicated that it asked those (other than Native Americans where translation was necessary) who commented on the EA to do so in writing (DR at 3), the case record contains no letters or other documentation showing this public participation in the process leading up to BLM's Oct. 9, 1996, decision.

The BLM will coordinate with the Utah Department of Transportation to increase safety in the vicinity of the Contact Station. This could include additional warning signs along the highway.

A correction has been made to the Cumulative Impacts section to show that additional disturbance will take place on 0.4 acre.

An accessible public telephone will be provided.

The relationship between activities conducted at the Contact Station and at Natural Bridges National Monument has been clarified. The upgraded facilities will require an on-site BLM presence. Housing at Kane Gulch will continue to be temporary in nature.

(DR at 1-2.)

BLM noted its "special effort to involve Native Americans in the EA review process":

This began at meetings and an on-site tour with members of the Utah Navajo Commission. The four Navajo tribal chapters, Oljato, Mexican Water, Dennehotso and Navajo Mountain were visited between July 21 and August 24, 1996. The Hopi tribe was contacted in writing, by telephone and in person through a presentation made to the Hopi Cultural Advisory Team chaired by Leigh Jenkins, the Hopi Cultural Program Director. This visit took place on August 15, 1996. The Ute Mountain Ute Tribe was contacted in writing and by telephone. All of these visits generated comments which are part of this analysis.

BLM prepared a "comment analysis," attached to the DR, responding to comments it received on its EA. In response to comments on the central question of whether permanent facilities would attract more visitors to the Grand Gulch Plateau, which would "worsen already unacceptable levels of use," BLM again asserted that a new contact facility will be a focus for educational efforts aimed at users already visiting the Plateau. It again stressed that, because use is increasing, it is essential that as many users as possible receive the message of proper treatment of scarce and fragile nonrenewable resources, which can be accomplished through a well developed educational program that begins with a required stop at the Kane Gulch Visitor Contact Station. (Comment Analysis at 4.)

As to comments highlighting the need to take traditional cultural uses of the Grand Gulch Plateau into account in the EA, BLM noted that "[e]xtensive effort was made to solicit Native American input and comments during the preparation of this EA," including "an on-site tour for members of the Utah Navajo Commission." (Comment Analysis at 4.) The EA also

noted that the Navajo and Hopi Tribes were involved in preparing "[a]ppropriate, culturally sensitive interpretation" for information boards at the site. (Comment Analysis at 6.) It flatly asserted that "[n]othing in this proposal will impact traditional cultural uses of the area," but (echoing its earlier statement that Native American consultation had not been completed) noted that "in the future more safeguards will be added to insure that other activities on the Plateau do not adversely affect those uses." (Comment Analysis at 5.)

BLM noted that the size of the visitor contact center had been modified, such that the building and courtyard will be reduced in size by approximately 1,100 square feet. The parking area has also been modified to include pull-through parking for larger vehicles. (Comment Analysis at 5.) BLM did not specify how the size of the building or the courtyard would be reduced, or how the parking lot would be "modified" (presumably, enlarged) for larger vehicles.

BLM's comment analysis contains several references to issues that were assertedly addressed in the Grand Gulch CRMP, but no citations. For example, as to comments that its EA does not address "visitor management," BLM commented that "[t]he issue of visitor management was addressed in the Grand Gulch Plateau Cultural and Recreation Management Plan. This EA does not change those management strategies." (Comment Analysis at 4.) No attempt was made to address those questions in the site-specific context presented here. BLM rejected suggestions that a carrying capacity study (Comment Analysis at 4) or use limitations (Comment Analysis at 5) were needed in the same summary manner. Again, no attempt was made to explain these issues as presented by this specific proposal.

[1] It is well established that a finding of no significant environmental impact with respect to a proposed action based on an environmental assessment will be affirmed only when the record establishes, inter alia, that BLM took a "hard look" at the environmental impacts of the activity, and when appellants have not shown significant environmental impacts other than those analyzed in the EA. See Robert W. Hall, 149 IBLA 130, 138 (1999), and cases cited. Scrutiny of the record reveals both that BLM did not meet that burden in this case, and that appellants have established that further review is necessary.

We note initially that we appreciate the need of a new, modern facility to meet BLM's administrative responsibilities and to provide adequate accommodations for its employees and volunteers. However, by tying the replacement or improvement of BLM's existing administrative facilities to the creation of a visitor center, BLM enlarged its responsibility to review the environmental effects of its action.

BLM expressly decided not to address the possibility that "[n]ew facilities would increase visitor use," stating that "[v]isitor use on Cedar Mesa has been and continues to increase due to outside publicity and word-of-mouth" (EA at 5) and that the proposed visitor contact station

is not intended to be a visitor center or a point of destination for the general tourist. ^{12/} (EA at 8.) It stated that increases in use of the canyons would most likely be caused by the public's knowledge of the region generated by periodicals and guidebooks. (EA at 6.)

While it may be true that more visitors would come to the site even without having a new visitor center, it is impossible to discredit the notion that building a new visitor center, with modern amenities and a reliable source of potable water, will increase the number of visitors to Grand Gulch. It is plain from BLM's description of the visitor center that it contemplates attracting visitors to the center by establishing a "portal" to the resources. The resources will attract visitors to the center, but the center will also unquestionably attract visitors to the resources. It is only to be expected that providing modern facilities and a reliable source of potable water at the trailhead will increase day trips to Grand Gulch. BLM simply presumed that this would not be so and failed to cite historical use data that might show otherwise. Appellants were able to locate such historical data. BLM evidently did develop "visitor use projections" in connection with its consideration of how much water would be used at the site, but that data does not appear in the present record. Even if we could refer to that data, we would conclude that BLM had the duty to analyze it in the first instance. That failure alone justifies remanding the matter to BLM for further review.

BLM expressly declined to address the issue of "visitor management" in the site-specific context of the visitor contact center, relying on broader consideration of the issue in the Grand Gulch CRMP. This was error. The question of visitor management inevitably arises as a consequence of building a visitor contact center. If visits cannot be managed without increases in destructive activity or other adverse consequences, BLM's decision to proceed with the visitor contact center might not be supportable. BLM should have addressed this question against the background of the acknowledged increased use of the area (whether resulting from building the visitor contact center or not).

The Council on Environmental Quality has provided regulations applicable to and binding on BLM for implementing the procedural provisions of NEPA. 40 C.F.R. § 1500.3; Red Thunder, Inc., 117 IBLA 167, 181 n.11, 97 I.D. 263, 271 n.11 (1990). Those regulations define "effects" that an agency must consider in its environmental analyses, expressly including "indirect effects" (40 C.F.R. § 1508.8(b)) and "cumulative impacts." 40 C.F.R. § 1508.27(b)(7). BLM's CRMP also directed consideration of issues concerning protection of cultural resources and of "secondary effects." (EA at 5.)

^{12/} We note that BLM dealt summarily with this important question in the EA despite its recognition in the CRMP that there was a public perception that a new contact station would encourage increased use. BLM's conclusory statement that the facility would not attract additional visitors did nothing to refute that perception.

We are unsatisfied that BLM's EA is adequate, since it expressly declined to consider the effect of the visitor center on the protection of cultural sites, citing its existing "legal mandate and general objective to protect cultural resources on public lands throughout the region that would not change regardless of the alternative sites considered." This simply begs the question whether construction of the visitor center would have any adverse indirect or cumulative effects on those cultural resources. It is not disputed that providing a facility to educate the public will have some benefits in preserving cultural resources from degradation. See Southern Utah Wilderness Alliance, 128 IBLA at 385. However, those benefits must be weighed, in the NEPA process, against any ill effects resulting from increased use that providing a modern facility at the trailhead into the area would cause.

We are similarly troubled by BLM's treatment of the Native concerns, since it expressly declined to address these issues and effectively acknowledged that, as of the issuance of the decision to go ahead, it had not fully resolved those concerns, but that it would do so in the future. We are puzzled by BLM's open refusal to address these issues in its EA, in view of its willingness to involve Native Americans in consultations. ^{13/} Further, we find BLM's issuance of its decision prior to completion of its review of Native American concerns to be inconsistent with its responsibility to take Native American concerns into account during its decisionmaking process (see generally The Klamath Tribes, 135 IBLA 192, 198-99 (1996)), not after the fact. BLM's actions here in deciding to proceed with a project controversial to Native American concerns while making assurances that those concerns would eventually be considered hardly inspire confidence that those concerns would be taken seriously, particularly where there is open opposition to starting the project.

We conclude that it was error for BLM to decide to proceed with this action without clarifying whether it would violate recognized Native American rights. BLM did not have to await completion of any pending initiatives to establish such rights, but, in the face of a challenge to its ownership or stewardship of the lands affected vis-a-vis Indian ownership rights, should at least have decided such questions prior to issuance of its decision instead of affirmatively declining to address them.

BLM also relied too heavily on the previous environmental assessments here. The RMP DR expressly provided that activities within the Cedar Mesa ACEC

would be approved only with special conditions to protect cultural and visual resources and primitive recreation opportunities. * * * Measures that limit surface disturbance

^{13/} We recognize that BLM did involve Native American authorities in its decisionmaking process. On remand, BLM should continue to do so.

serve cultural resource objectives by reducing direct and indirect impacts. Cultural properties eligible for National Register of Historic Places would be surrounded by an avoidance area sufficient to allow permanent protection. If cultural resources or their avoidance areas cannot be avoided, appropriate mitigation would be applied; such measures range from limited testing to extensive excavation. * * * The CRMP developed for the ACEC would guide site protection, data recovery, and all other necessary cultural resource management activities. * * * The Grand Gulch special emphasis area and ROS P-class areas within the ACEC would be managed to provide primitive recreation opportunities.

(RMP DR at 87-88.) We find nothing in the record indicating that BLM identified vulnerable cultural resources likely to be impacted by increased use of the area or developed any specific plan for protecting such sites. Appellants Aneth Chapter and Oljato Chapter have pointed out that apparent failure. On remand, BLM should develop this information, as required by the earlier RMP.

Appellant Owen Severance reports that, following issuance of its decision, BLM made "numerous significant changes in the proposal that were not addressed in [its] documentation," (Severance Statement of Reasons at 1) leaving the nature of BLM's decision unclear. He cites a 1994 BLM Construction Project Description for the visitor contact center that is not in the record, pointing out that BLM's final decision to build the center calls for a facility including about 2,500 square feet of covered and uncovered exterior space, an option not considered in that project description. BLM noted in its comment analysis that it was making changes to the proposed design of the visitor contact center. On remand, it should crystalize those changes, report them to the public, and include them in its case record.

Our decision does not reach all of the issues raised by appellants. To the extent not expressly discussed herein, we reserve judgment on those questions pending further decisionmaking by BLM on remand.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is set aside, and the matter is remanded for further action as set out above.

David L. Hughes
Administrative Judge

I concur:

John H. Kelly
Administrative Judge